



General Assembly

***Substitute Bill No. 5781***

*February Session, 2000*

***An Act Concerning Protection Of Children In Probate Courts.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. Subsection (c) of section 17a-112 of the general statutes, as  
2       amended by section 4 of public act 99-166, is repealed and the  
3       following is substituted in lieu thereof:

4       (c) The Superior Court, upon hearing and notice as provided in  
5       sections 45a-716 and 45a-717, as amended by this act, may grant a  
6       petition filed pursuant to this section if it finds by clear and convincing  
7       evidence (1) that the Department of Children and Families has made  
8       reasonable efforts to locate the parent and to reunify the child with the  
9       parent, unless the court finds in this proceeding that the parent is  
10      unable or unwilling to benefit from reunification efforts provided such  
11      finding is not required if the court has determined at a hearing  
12      pursuant to subsection (b) of section 17a-110 or section 17a-111b that  
13      such efforts are not appropriate, (2) that termination is in the best  
14      interest of the child, and (3) that: (A) The child has been abandoned by  
15      the parent in the sense that the parent has failed to maintain a  
16      reasonable degree of interest, concern or responsibility as to the  
17      welfare of the child; (B) the parent of a child who (1) has been found by  
18      the Superior Court or the Probate Court to have been neglected or  
19      uncared for in a prior proceeding, or (2) is found to be neglected or  
20      uncared for and has been in the custody of the commissioner for at  
21      least fifteen months and such parent has been provided specific steps

22 to take to facilitate the return of the child to the parent pursuant to  
23 section 46b-129 and has failed to achieve such degree of personal  
24 rehabilitation as would encourage the belief that within a reasonable  
25 time, considering the age and needs of the child, such parent could  
26 assume a responsible position in the life of the child; (C) the child has  
27 been denied, by reason of an act or acts of parental commission or  
28 omission including, but not limited to, sexual molestation or  
29 exploitation, severe physical abuse or a pattern of abuse, the care,  
30 guidance or control necessary for such child's physical, educational,  
31 moral or emotional well-being. Nonaccidental or inadequately  
32 explained serious physical injury to a child shall constitute prima facie  
33 evidence of acts of parental commission or omission sufficient for the  
34 termination of parental rights; (D) there is no ongoing parent-child  
35 relationship, which means the relationship that ordinarily develops as  
36 a result of a parent having met on a day to day basis the physical,  
37 emotional, moral and educational needs of the child and to allow  
38 further time for the establishment or reestablishment of such  
39 parent-child relationship would be detrimental to the best interest of  
40 the child; (E) the parent of a child under the age of seven years who is  
41 neglected or uncared for, has failed, is unable or is unwilling to achieve  
42 such degree of personal rehabilitation as would encourage the belief  
43 that within a reasonable period of time, considering the age and needs  
44 of the child, such parent could assume a responsible position in the life  
45 of the child and such parent's parental rights of another child were  
46 previously terminated pursuant to a petition filed by the  
47 Commissioner of Children and Families; (F) the parent has killed  
48 through deliberate, nonaccidental act another child of the parent or has  
49 requested, commanded, importuned, attempted, conspired or solicited  
50 such killing or has committed an assault, through deliberate,  
51 nonaccidental act that resulted in serious bodily injury of another child  
52 of the parent; or (G) the parent was convicted by a court of competent  
53 jurisdiction of a sexual assault resulting in the conception of the child,  
54 except a conviction for a violation of section 53a-71 or 53a-73a,  
55 provided the court may terminate such parent's parental rights to such  
56 child at any time after such conviction.

57       Sec. 2. Subsection (g) of section 45a-717 of the general statutes is  
58 repealed and the following is substituted in lieu thereof:

59       (g) At the adjourned hearing or at the initial hearing where no  
60 investigation and report has been requested, the court may approve a  
61 petition terminating the parental rights and may appoint a guardian of  
62 the person of the child, or, if the petitioner requests, the court may  
63 appoint a statutory parent, if it finds, upon clear and convincing  
64 evidence, that (1) the termination is in the best interest of the child, and  
65 (2) (A) the child has been abandoned by the parent in the sense that the  
66 parent has failed to maintain a reasonable degree of interest, concern  
67 or responsibility as to the welfare of the child; (B) the child has been  
68 denied, by reason of an act or acts of parental commission or omission,  
69 including, but not limited to sexual molestation and exploitation,  
70 severe physical abuse or a pattern of abuse, the care, guidance or  
71 control necessary for the child's physical, educational, moral or  
72 emotional well-being. Nonaccidental or inadequately explained  
73 serious physical injury to a child shall constitute prima facie evidence  
74 of acts of parental commission or omission sufficient for the  
75 termination of parental rights; (C) there is no ongoing parent-child  
76 relationship which is defined as the relationship that ordinarily  
77 develops as a result of a parent having met on a continuing, day-to-  
78 day basis the physical, emotional, moral and educational needs of the  
79 child and to allow further time for the establishment or  
80 reestablishment of the parent-child relationship would be detrimental  
81 to the best interests of the child; (D) the parent of a child who (1) has  
82 been found by the Superior Court or the Probate Court to have been  
83 neglected or uncared for in a prior proceeding, or (2) is found to be  
84 neglected or uncared for and has been in the custody of the  
85 commissioner for at least fifteen months and such parent has been  
86 provided specific steps to take to facilitate the return of the child to the  
87 parent pursuant to section 46b-129 and has failed to achieve such  
88 degree of personal rehabilitation as would encourage the belief that  
89 within a reasonable time, considering the age and needs of the child,  
90 such parent could assume a responsible position in the life of the child;

91 (E) the parent of a child, under the age of seven years who is neglected  
92 or uncared for, has failed, is unable or is unwilling to achieve such  
93 degree of personal rehabilitation as would encourage the belief that  
94 within a reasonable amount of time, considering the age and needs of  
95 the child, such parent could assume a responsible position in the life of  
96 the child and such parent's parental rights of another child were  
97 previously terminated pursuant to a petition filed by the  
98 Commissioner of Children and Families; (F) the parent has killed  
99 through deliberate, nonaccidental act another child of the parent or has  
100 requested, commanded, importuned, attempted, conspired or solicited  
101 such killing or has committed an assault, through deliberate,  
102 nonaccidental act that resulted in serious bodily injury of another child  
103 of the parent; or (G) the parent was convicted by a court of competent  
104 jurisdiction of sexual assault except for a violation of section 53a-71 or  
105 53a-73a resulting in the conception of the child.

106 Sec. 3. Section 45a-610 of the general statutes is repealed and the  
107 following is substituted in lieu thereof:

108 If the Court of Probate finds that notice has been given or a waiver  
109 has been filed, as provided in section 45a-609, as amended by this act,  
110 it may remove a parent as guardian, if the court finds by clear and  
111 convincing evidence one of the following: (1) The parent consents to  
112 his or her removal as guardian; or (2) the minor child has been  
113 abandoned by the parent in the sense that the parent has failed to  
114 maintain a reasonable degree of interest, concern or responsibility for  
115 the minor's welfare; or (3) the minor child has been denied the care,  
116 guidance or control necessary for his or her physical, educational,  
117 moral or emotional well-being, as a result of acts of parental  
118 commission or omission, whether the acts are the result of the physical  
119 or mental incapability of the parent or conditions attributable to  
120 parental habits, misconduct or neglect, and the parental acts or  
121 deficiencies support the conclusion that the parent cannot exercise, or  
122 should not in the best interests of the minor child be permitted to  
123 exercise, parental rights and duties at this time; [or] (4) the minor child  
124 has had physical injury or injuries inflicted upon [him] the minor child

125 by a person responsible for such child's health, welfare or care, or by a  
126 person given access to such child by such responsible person, other  
127 than by accidental means, or has injuries which are at variance with  
128 the history given of them or is in a condition which is the result of  
129 maltreatment such as, but not limited to, malnutrition, sexual  
130 molestation, deprivation of necessities, emotional maltreatment or  
131 cruel punishment; or (5) the minor child has been found to be  
132 neglected or uncared for, as defined in section 46b-120. If, after  
133 removal of a parent as guardian under this section, the child has no  
134 guardian of his person, such a guardian may be appointed under the  
135 provisions of section 45a-616.

136 Sec. 4. Section 45a-620 of the general statutes is repealed and the  
137 following is substituted in lieu thereof:

138 The Court of Probate may appoint counsel to represent or appear on  
139 behalf of any minor in proceedings brought under sections 45a-603 to  
140 45a-622, inclusive, [to speak on behalf of the best interests of the minor.  
141 Counsel should] and sections 45a-715 to 45a-717, inclusive. In any  
142 proceeding in which abuse or neglect, as defined in section 46b-120, is  
143 alleged by the applicant, or reasonably suspected by the court, a minor  
144 shall be represented by counsel appointed by the court to represent the  
145 minor. In all cases in which the court deems appropriate, the court  
146 shall also appoint a person, other than the person appointed to  
147 represent the minor, as guardian ad litem for such minor to speak on  
148 behalf of the best interests of the minor, which guardian ad litem is not  
149 required to be an attorney-at-law but shall be knowledgeable about the  
150 needs and protection of children. The Court of Probate shall appoint  
151 counsel to represent any respondent who notifies the court that he or  
152 she is unable to obtain counsel, or is unable to pay for counsel. The cost  
153 of such counsel shall be paid by the person whom he or she represents,  
154 except that if such person is unable to pay for such counsel and files an  
155 affidavit with the court demonstrating his or her inability to pay, the  
156 reasonable compensation of appointed counsel shall be established by,  
157 and paid from funds appropriated to, the Judicial Department,  
158 however, if funds have not been included in the budget of the Judicial

159 Department for such purposes, such compensation shall be established  
160 by the Probate Court Administrator and paid from the Probate Court  
161 Administration Fund. In the case of a minor, such affidavit may be  
162 filed by a suitable person having knowledge of the financial status of  
163 such minor.

164 Sec. 5. Subsection (c) of section 45a-607 of the general statutes, as  
165 amended by section 23 of public act 99-84, is repealed and the  
166 following is substituted in lieu thereof:

167 (c) Except as provided in subsection (b) of this section, upon receipt  
168 of an application for temporary custody under this section, the court  
169 shall promptly set the time and place for hearing to be held on such  
170 application. The court shall order notice of the hearing on temporary  
171 custody to be given by regular mail to the Commissioner of Children  
172 and Families and by personal service in accordance with section 52-50  
173 to both parents and to the minor, if over twelve years of age, at least  
174 five days prior to the date of the hearing, except that in lieu of personal  
175 service on a parent or the father of a child born out of wedlock who is  
176 either a petitioner or who signs under penalty of false statement a  
177 written waiver of personal service on a form provided by the Probate  
178 Court Administrator, the court may order notice to be given by  
179 certified mail, return receipt requested, deliverable to addressee only,  
180 at least five days prior to the date of the hearing. If the whereabouts of  
181 the parents are unknown, or if such delivery cannot reasonably be  
182 effected, then notice shall be ordered to be given by publication. Such  
183 notice may be combined with the notice under section 45a-609, as  
184 amended by this act, or with the notice required under section 45a-716.  
185 If the parents are not residents of the state or are absent from the state,  
186 the court shall order notice to be given by certified mail, return receipt  
187 requested, deliverable to addressee only, at least five days prior to the  
188 date of the hearing. If the whereabouts of the parents are unknown, or  
189 if delivery cannot reasonably be effected, the court may order notice to  
190 be given by publication. Any notice by publication under this  
191 subsection shall be in a newspaper which has a circulation at the  
192 last-known place of residence of the parents. In either case, such notice

193 shall be given at least five days prior to the date of the hearing, except  
194 in the case of notice of hearing on immediate temporary custody under  
195 subsection (b) of this section. If the applicant alleges that the  
196 whereabouts of a respondent are unknown, such allegation shall be  
197 made under penalty of false statement and shall also state the  
198 last-known address of the respondent and the efforts which have been  
199 made by the applicant to obtain a current address. The applicant shall  
200 have the burden of ascertaining the names and addresses of all parties  
201 in interest and of proving to the satisfaction of the court that he or she  
202 used all proper diligence to discover such names and addresses.  
203 Except in the case of newspaper notice, such notice shall include: (1)  
204 The time and place of the hearing, (2) a copy of the application for  
205 removal or application for termination of parental rights, (3) a copy of  
206 the motion for temporary custody, (4) any affidavit or verified petition  
207 filed with the motion for temporary custody, (5) any other documents  
208 filed by the petitioner, (6) any other orders or notices made by the  
209 court of probate, and (7) any request for investigation by the  
210 Department of Children and Families or any other person or agency.  
211 Such notice shall also inform the respondent of the right to have an  
212 attorney represent him or her, and if he or she is unable to obtain or  
213 pay an attorney, the respondent may request the court of probate to  
214 appoint an attorney to represent him or her. Newspaper notice shall  
215 include such facts as the court may direct.

216 Sec. 6. Subsection (b) of section 45a-609 of the general statutes, as  
217 amended by section 24 of public act 99-84, is repealed and the  
218 following is substituted in lieu thereof:

219 (b) The court shall order notice of the hearing to be given by regular  
220 mail to the Commissioner of Children and Families and by personal  
221 service in accordance with section 52-50 to both parents and to the  
222 minor, if over twelve years of age, at least ten days before the time of  
223 the hearing, except that in lieu of personal service on a parent or the  
224 father of a child born out of wedlock who is either a petitioner or who  
225 signs under oath a written waiver of personal service on a form  
226 provided by the Probate Court Administrator, the court may order

227 notice to be given by certified mail, return receipt requested,  
228 deliverable to addressee only, at least ten days prior to the date of the  
229 hearing. If such delivery cannot reasonably be effected, then notice  
230 shall be ordered to be given by publication. If the parents reside out of  
231 or are absent from the state, the court shall order notice to be given by  
232 certified mail, return receipt requested, deliverable to addressee only,  
233 at least ten days prior to the date of the hearing. If the whereabouts of  
234 the parents are unknown, or if delivery cannot reasonably be effected,  
235 the court may order notice to be given by publication. Any notice by  
236 publication under this subsection shall be in some newspaper which  
237 has a circulation at the parents' last-known place of residence. In either  
238 case, such notice shall be given at least ten days before the time of the  
239 hearing. If the applicant alleges that the whereabouts of a respondent  
240 are unknown, such allegation shall be made under penalty of false  
241 statement and shall also state the last-known address of the  
242 respondent and the efforts which have been made by the applicant to  
243 obtain a current address. The applicant shall have the burden of  
244 ascertaining the names and addresses of all parties in interest and of  
245 proving to the satisfaction of the court that he or she used all proper  
246 diligence to discover such names and addresses. Except in the case of  
247 newspaper notice, the notice of hearing shall include the following: (1)  
248 The notice of hearing, (2) the application for removal of parent as  
249 guardian, (3) any supporting documents and affidavits filed with such  
250 application, (4) any other orders or notice made by the Court of  
251 Probate, and (5) any request for investigation by the Department of  
252 Children and Families or any other person or agency. Such notice shall  
253 also inform the respondent of the right to have an attorney represent  
254 him or her in the matter, and if he or she is unable to obtain or to pay  
255 an attorney, the respondent may request the Court of Probate to  
256 appoint an attorney to represent him or her. Newspaper notice shall  
257 include such facts as the court may direct.

258       Sec. 7. Section 45a-619 of the general statutes is repealed and the  
259 following is substituted in lieu thereof:

260       [In any proceeding under sections 45a-603 to 45a-622, inclusive, the



261 Court of Probate shall request an investigation by the Commissioner of  
262 Children and Families or by any organization, agency or individual  
263 licensed or approved by the commissioner, unless this requirement is  
264 waived by the court for cause shown.]

265 In any proceeding under sections 45a-603 to 45a-624, inclusive, in  
266 which the applicant has alleged that the minor has been abused or  
267 neglected, as those terms are defined in section 46b-120, or in which  
268 the probate judge has reason to believe that the minor may have been  
269 abused or neglected, the Court of Probate shall request the  
270 Commissioner of Children and Families or any organization, agency or  
271 individual licensed or approved by the commissioner, to make an  
272 investigation and written report to it, within ninety days from the  
273 receipt of such request, unless the request concerns an application for  
274 immediate temporary custody or temporary custody, in which case the  
275 commissioner shall render the report by such date as is reasonably  
276 ordered by the court. The report shall indicate the physical, mental and  
277 emotional status of the minor and shall contain such facts as may be  
278 relevant to the court's determination of whether the proposed court  
279 action will be in the best interests of the minor, including the physical,  
280 social, mental, and financial condition of the parties, and such other  
281 factors which the commissioner or agency finds relevant to the court's  
282 determination of whether the proposed action will be in the best  
283 interests of the minor. In any other proceeding under sections 45a-603  
284 to 45a-624, inclusive, the court shall request an investigation and  
285 report unless this requirement is waived for cause shown. The report  
286 shall be admissible in evidence, subject to the right of any interested  
287 party to require that the person making it appear as a witness, if  
288 available, and subject to examination.

289 Sec. 8. Section 45a-623 of the general statutes is repealed and the  
290 following is substituted in lieu thereof:

291 In any proceeding under sections 45a-603 to 45a-622, inclusive, that  
292 is contested, the Court of Probate shall, upon motion of any party other  
293 than a party who made application for the removal of a parent as a

294 guardian, under rules adopted by the judges of the Supreme Court,  
295 transfer the case to the Superior Court. [Upon transfer] In addition to  
296 the provisions of this section, the Court of Probate may, on the court's  
297 own motion or that of any interested party, transfer the case to another  
298 judge of probate, which judge shall be appointed by the Probate Court  
299 Administrator from a panel of qualified probate judges who specialize  
300 in children's matters. Such panel shall be proposed by the Probate  
301 Court Administrator and approved by the executive committee of the  
302 Connecticut Probate Assembly. The location of the hearing shall be in  
303 the original Court of Probate, except upon agreement of all parties and  
304 the Department of Children and Families, where applicable. If the case  
305 is transferred and venue altered, the clerk of the Court of Probate shall  
306 transmit to the clerk of the Superior Court or the Probate Court to  
307 which the case was transferred the original files and papers in the case.

308       Sec. 9. Subsection (g) of section 45a-715 of the general statutes is  
309 repealed and the following is substituted in lieu thereof:

310       (g) Before a hearing on the merits in any case in which a petition for  
311 termination of parental rights is contested in a court of probate, the  
312 Court of Probate shall, on the motion of any legal party except the  
313 petitioner or may on its own motion or that of the petitioner, under  
314 rules adopted by the judges of the Supreme Court, transfer the case to  
315 the Superior Court. [Upon transfer] In addition to the provisions of  
316 this section, the Probate Court may, on the court's own motion or that  
317 of any interested party, transfer the case to another judge of probate,  
318 which judge shall be appointed by the Probate Court Administrator  
319 from a panel of qualified probate judges who specialize in children's  
320 matters. Such panel shall be proposed by the Probate Court  
321 Administrator and approved by the executive committee of the  
322 Connecticut Probate Assembly. The location of the hearing shall be in  
323 the original Probate Court, except upon agreement of all parties and  
324 the Department of Children and Families, where applicable. If the case  
325 is transferred, the clerk of the Court of Probate shall transmit to the  
326 clerk of the Superior Court or the Probate Court to which the case was  
327 transferred, the original files and papers in the case. The Superior

328 Court or the Probate Court to which the matter was transferred, upon  
329 hearing after notice as provided in sections 45a-716 and 45a-717, as  
330 amended by this act, may grant the petition as provided in section 45a-  
331 717, as amended by this act.

332 Sec. 10. Section 46b-150a of the general statutes is repealed and the  
333 following is substituted in lieu thereof:

334 (a) With respect to a petition filed in Superior Court pursuant to  
335 section 46b-150, the Superior Court may, if it deems it appropriate, (1)  
336 require a probation officer, the Commissioner of Children and Families  
337 or any other person to investigate the allegations in the petition and  
338 file a report of that investigation with the court, (2) appoint counsel for  
339 the minor who may serve as guardian ad litem for the minor, (3)  
340 appoint counsel for the minor's parents or guardian, or (4) make any  
341 other orders regarding the matter which the court deems appropriate.

342 (b) With respect to a petition filed in Probate Court pursuant to  
343 section 46b-150, the Probate Court shall request an investigation by the  
344 Commissioner of Children and Families, unless this requirement is  
345 waived by the court for cause shown. The court shall appoint counsel  
346 to represent the minor. The costs of such counsel shall be paid by the  
347 minor, except that if such minor is unable to pay for such counsel and  
348 files an affidavit with the court demonstrating [his] inability of the  
349 minor to pay, the reasonable compensation shall be established by, and  
350 paid from funds appropriated to, the Judicial Department. If funds  
351 have not been included in the budget of the Judicial Department for  
352 such purposes, such compensation shall be established by the Probate  
353 Court Administrator and paid from the Probate Court Administration  
354 Fund.

355 (c) Upon finding at the hearing or any time during the pendency of  
356 the proceeding in the Probate Court, that reasonable cause exists to  
357 warrant an examination, the court on its own motion or on motion of  
358 any party, may order the minor to be examined at a suitable place by a  
359 physician, psychiatrist or licensed psychologist appointed by the court.

360 The court may also order examination of a parent whose competency  
361 or ability to care for a minor before the court is at issue. The expenses  
362 of any examination if ordered by the court on its own motion shall be  
363 paid for by the petitioner or if ordered on motion by a party, shall be  
364 paid for by the party moving for such an examination, unless such  
365 party or petitioner is unable to pay such expenses in which case they  
366 shall be paid for by funds appropriated to the Judicial Department.  
367 However, in the case of a probate matter, if funds have not been  
368 included in the budget of the Judicial Department for such purposes,  
369 such expenses shall be established by the Probate Court Administrator  
370 and paid from the Probate Court Administration Fund. The court may  
371 consider the results of the examinations in ruling on the merits of the  
372 petition.

**JUD Committee Vote:** Yea 39 Nay 0 JFS